

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA; and,
NINE NAMED FEDERAL EMPLOYEES,

Plaintiff,

CIV. S-04-1263 FCD GGH PS

vs.

WILLIAM J. BIGGS and BETTY BIGGS,

Defendants.

ORDER AND FINDINGS &
RECOMMENDATIONS

I. INTRODUCTION

This action, in which defendants are proceeding pro se, has been referred to the undersigned pursuant to E.D. Cal. L.R. 72-302(c)(21). Presently pending before the court is the government's motion for summary judgment, filed October 27, 2006.¹ After the court reviewed the papers in support of and in opposition to the motion, it ordered further briefing as the evidence submitted did not fully trace the lineage to the mining claims upon which the disputed structures stand. The court was concerned that an innocent mining claim owner might be adversely impacted by a court order granting injunctive relief in this case, and that the Biggs

¹ Hearing date of February 8, 2007 was vacated and the matter taken under submission on February 2, 2007.

1 might be interlopers in mining claims owned by other individuals. Therefore, the court ordered a
 2 supplemental declaration which has now been filed. Having now reviewed that briefing, the
 3 court issues the following findings and recommendations.²

4 This action is proceeding on the government's first amended complaint, filed
 5 August 16, 2006. It seeks relief as a result of William and Betty Biggs' ("Biggs") use of
 6 government lands for purported mining claims when it is alleged that in fact defendants have not
 7 used the land for mining purposes but as residential and/or recreational property since
 8 approximately 1974. The government seeks removal of unauthorized structures from the land, an
 9 injunction preventing the Biggs from using their mining claims, declaration that the government
 10 is the sole owner of the structures and has a right to remove them, and declaration that the Biggs'
 11 financing statements against nine federal employees³ involved in the removal of the unauthorized
 12 structure are false, fraudulent, and invalid under federal and state law, and that they be expunged.
 13 The government also seeks statutory damages.

14 II. SUMMARY JUDGMENT STANDARDS UNDER RULE 56

15 The "purpose of summary judgment is to 'pierce the pleadings and to assess the
 16 proof in order to see whether there is a genuine need for trial.'" Matsushita Elec. Indus. Co. v.
 17 Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986) (quoting Fed. R. Civ. P.
 18 56(e) advisory committee note to 1963 amendment). Summary judgment is appropriate "if . . .
 19 there is no genuine issue as to any material fact, and . . . the moving party is entitled to judgment
 20 as a matter of law." Rule 56(c). Disputed facts must be material (affecting the outcome of the
 21 suit under the governing law), and genuine (supported by evidence permitting a reasonable jury
 22

23 ² Defendants have filed a myriad of papers, most of which are of dubious value. To the
 24 extent that these papers can be construed as opposing the government's motion, they will be so
 construed.

25 ³ The nine federal employees are John Gisla, Jean Masquelier, Steven Eubanks, William
 26 Haui, Greg Schimke, Mike Dunn, George Chapman, Ren'e Barros, and David Brown. Ex. D. at
 p. 2, Pl.'s Mem. P. & A. Supp. Mot. Summ. J.

1 to return a favorable verdict). Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct.
2 2505, 2510 (1986).

3 The moving party:

4 [A]lways bears the initial responsibility of informing the district
5 court of the basis for its motion, and identifying those portions of
6 “the pleadings, depositions, answers to interrogatories, and
7 admissions on file, together with the affidavits, if any,” which it
8 believes demonstrate the absence of a genuine issue of material
9 fact.

8 Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 2553 (1986) (quoting Rule 56(c)).

9 The moving party without the burden of proof at trial may rely “solely on the
10 pleadings, depositions, answers to interrogatories, and admissions on file.” Id. (citations
11 omitted.) That party need only point to the absence of a genuine material factual issue, and is not
12 required to produce evidence negating the opponent’s claim. Id. at 323-24; Lujan v. National
13 Wildlife Fed’n, 497 U.S. 871, 885, 110 S. Ct. 3177, 3187 (1990).

14 When the moving party meets its responsibility, the burden shifts to the opposing
15 party. Matsushita, 475 U.S. at 586, 106 S. Ct. at 1356. The opposing party then must submit
16 “significant probative evidence” on each element of his claims on which he bears the burden at
17 trial.⁴ Barnett v. Centoni, 31 F.3d 813, 815 (9th Cir. 1994). Unverified denials in pleadings are
18 insufficient. Neither can conclusory statements defeat a properly supported motion. Scott v.
19 Rosenberg, 702 F.2d 1263, 1271-72 (9th Cir. 1983). Rather, specific facts in the form of
20 affidavits or admissible discovery material must be submitted. Rule 56(e); Matsushita, 475 U.S.
21 at 586 n.11, 106 S. Ct. at 1356 n.11.

22 The opposing party need not conclusively establish any fact. To demonstrate a
23 genuine dispute, however, the opposing party “must do more than simply show that there is some
24 metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead

25
26 ⁴ “[A] complete failure of proof concerning an essential element of the nonmoving
party’s case necessarily renders all other facts immaterial.” Celotex, 477 U.S. at 322.

1 a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.”
 2 Matsushita, 475 U.S. at 587, 106 S. Ct. at 1356 (citation omitted). In other words, the evidence
 3 must demonstrate that a trial is required to resolve the parties’ differing versions of the truth.
 4 T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 631 (9th Cir. 1987).

5 The court believes the evidence of the opposing party, Anderson, 477 U.S. at 255,
 6 106 S. Ct. at 2513, and draws all reasonable inferences in its favor, Matsushita, 475 U.S. at 587,
 7 106 S. Ct. at 1356. Nevertheless, inferences are not drawn out of the air, and the opposing party
 8 must produce a factual predicate from which to draw an inference. Richards v. Nielsen Freight
 9 Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985).

10 III. FACTUAL BACKGROUND⁵

11 The history of the mining claims at issue is complicated as there were various
 12 claims over the years, including some claims originally owned by a Mr. P.D. Vail, but which the
 13 Biggs represented as claims they were working and eventually bought from Vail.⁶ Schimke
 14 Suppl Decl., ¶ 19.⁷ Most of these claims were later either declared void or forfeited, but currently
 15 the Biggs have two mining claims which are still valid. Id. at p. 2. For ease of reference, all
 16 mining claims will be referred to herein as the Biggs mining claims. All claims pertain to the
 17 same piece of property, located in the Tahoe National Forest. The unauthorized structures at
 18 issue in this case are located on the Crescent # 2 mining claim, currently registered to the Biggs

19 ⁵ The Biggs have not submitted a statement of facts which they contend are disputed or
 20 undisputed, in accordance with E.D. Local Rule 56-260(b). Therefore, the government’s version
 21 of the facts is accepted as true and is repeated as necessary. See Pl.’s Mot. at 3-18. To the extent
 22 that defendants attempt to raise a disputed issue of fact and make an argument that their cabin has
 been “grandfathered,” that argument will be addressed in the appropriate section.

23 ⁶ It appears that the Biggs had permission of these owners to work the claims; however,
 24 the available evidence demonstrates that they were vacationing and/or residing on the property in
 lieu of mining.

25 ⁷ Plaintiff’s originally submitted exhibit indicated that P.D. Vail sold his claims to Ed
 26 Brounciser and Bep Athanassion; however, a later search by the government’s Forest Service
 management indicates that this transaction could not be confirmed. Ex. A., Pl.’s Mem. P. & A.
 Supp. Mot. Summ. J., Attachment 7; Schimke Suppl. Decl., ¶¶ 7, 23.

1 as CAMC 272267.⁸ Schimke Decl., ¶ 2. The mining claims and their history are outlined here.

2 CAMC 51151 & 51152

3 1933 - Alice and John Leonard recorded two mining claims, referred to as “Crescent Extension
4 Placer Mining Claim and Crescent #2 Mining Claim.”

5 1979 - 1992 - Biggs filed proofs of Labor and Assessment Work Notices on these claims.

6 1993 - Bureau of Land Management (“BLM”) issued decision, declaring these claims abandoned
7 and void for failure to file affidavit of assessment work notice for 1991. Biggs appealed, and
8 appeal was dismissed by BLM. Ex. C., Pl.’s Mem. P. & A. Supp. Mot. Summ. J., Schimke Decl.
9 ¶ 1.

10 CAMC 258932 & 259833

11 May 28, 1993 - Biggs recorded two new notice of locations on same land as Crescent mining
12 claims.

13 December 8, 1993 - BLM issued decision, declaring claims abandoned and void for failure to pay
14 \$100 per claim rental fees for 1994. This decision was not appealed. Id. at ¶¶ 4, 5.

15 CAMC 262644 & 262645

16 April 4, 1994 - Biggs recorded two new notice of locations on same land as Crescent mining
17 claims.

18 June 11, 1998 - BLM issued a decision, declaring claims abandoned and void for failure to pay
19 \$100 per claim rental fees for 1998. This decision was not appealed. Id. at ¶¶ 6, 7.

20 CAMC 272267 & 272268

21 The unauthorized structures are on Crescent No. 2 mining claim registered as CAMC
22 272267. Schimke Supp. Decl., ¶ 2; Schimke Decl. Re Ownership of Structures, filed October 27,

23
24 ⁸ Although there are other active mining claims owned by Howard and Betty Evans, also
25 registered under the names “Crescent Extension” and “Crescent #2,” which are on the same legal
26 land description as the Biggs’ claims, they are adjacent to the Biggs’ claims and do not overlap
with the Biggs’ claims. Schimke Supp. Decl., ¶ 12, attach. 5. There are no other parties who
have located intervening claims on the same lands identified as Crescent Extension and Crescent
#2. Id. at ¶ 15.

1 2006, Attach. 9 at 2.

2 August 14, 1974 - Owner of Crescent No. 2, P.D. Vail, filed a Proof of Labor. Schimke Supp.
3 Decl., Attach. 8. This document indicates Vail owned the claim upon which the unauthorized
4 structures are located in 1974. Id.

5 September 29, 1975 - Biggs filed a Proof of Labor on Crescent No. 2 mining claim. Id. at
6 Attach. 9. This document indicates Biggs owned the claim upon which the unauthorized
7 structures are located in 1975. Id.

8 September 1, 1997 - Biggs recorded two new notice of locations on same land as Crescent
9 mining claims. Annual fees have been paid, and these claims are active. Schimke Decl. Re
10 Ownership of Structures, at ¶ 8. The Bureau of Land Management designated these claims
11 numbers 272266 and 272267. Id.; Attach. 9.

12 In 1974, upon application by P.D. Vail, the Forest Service approved construction
13 of an equipment shed on Vail's mining claim, with the condition that it was needed and used for
14 mining operations, and would be removed when such operations were discontinued. Id. at
15 Attachment 1. Prior to June 7, 1994, the Forest Service had conversations with both Vail and
16 Biggs where they were reminded that a cabin was not authorized on the mining claim.⁹ On June
17 7, 1974, the Forest Service visited the property and discovered that Biggs was erecting a 14 foot
18 by 16 foot cabin (20 feet by 20 feet with porch and deck), and other unauthorized structures. At
19 that time, Biggs was told to reduce the structure to the shed size of ten feet by 12 feet, and that it
20 could not have windows, cook stove, lights, shower, beds, toilet, and other living amenities.
21 Biggs was warned that legal action would be taken against him if he did not comply. Id. at
22 Attachment 4. Biggs intended to develop a mining claim by the fall of 1975; therefore, the
23 Forest Service informed him that it would delay a mineral examination of the claim until that
24 time. He was told not to further improve the cabin until a discovery point with a profitable gold
25

26 ⁹ The legal relationship between Vail and Biggs during this time period is not clear.

1 deposit was designated, and if one was not designated, he would have to restore the property to
2 its original condition. Id. at Attachment 6. Although there is an indication that Vail sold his
3 interest in his mining claim to Brounciser and Athanassion on August 2, 1974, the evidence
4 indicates he sold his interest to Biggs. Id. at Attachment 7; Schimke Supp. Decl., ¶¶ 19-23. In
5 fact, there is no record of sale of these claims to Brounciser or Athanassion, and the Biggs are the
6 only owners of record for the subject mining claims. Id. at ¶ 23.

7 On August 6, 1974, Biggs was informed by the Forest Service that he was not
8 authorized to improve the main road to the mining claims. Id. at Attachment 8. On January 21,
9 1975, the Forest Service sent Biggs new regulations, advising him that under these new
10 regulations he had 120 days to submit a Plan of Operations (“POO”). Id. at Attachment 9.¹⁰
11 Between 1975 and 1982, the Forest Service scheduled and rescheduled mineral examinations of
12 Biggs’ mining claims, and finally inspected the claims on June 29, 1982. Id. at Attachments 10,
13 11, 12, 14. No other action was taken until 1996 when the Forest Service advised Biggs that for
14 twenty years he had ignored the authority of the Forest Service, had accumulated increasing
15 structures, property and debris on the land, and advised him that he was required to file a POO
16 before conducting any mining activities on any unpatented mining claims in which he might have
17 an interest. Id. at Attachment 15.

18 The Biggs resided there for periods of time, ostensibly pursuant to their two
19 mining claims. When the Biggs finally submitted a POO for suction dredging operations on June
20 21, 1999, they claimed the 16 foot by 14 foot shed was “grandfathered.” Id. at Attachment 19.
21 On July 23, 2002, a Surface Use Determination was issued regarding the Biggs’ mining claims,
22 wherein it was determined that the cabin and all other structures were unnecessary and
23

24 ¹⁰ The letter states that anyone who was previously conducting operations when the new
25 regulations were effective, who would have been required to submit a POO, could continue
26 operations, but had 120 days thereafter to submit a plan. Id. Biggs was informed if he was not
sure if his mining activity would require an operating plan, he should file a “notice of intention,”
as provided by the regulations.

1 unreasonable for the type of operation proposed and should be removed. Id. at Attachment 30.
2 On February 3, 2003, the Forest Service issued an administrative decision declaring that based on
3 the Surface Use Determination, Biggs had 120 days to remove the outhouse, and three years to
4 remove the bath/shower structure and cabin. Id. at Attachment 31. The Biggs did not appeal this
5 decision. Id., Schimke Decl, ¶ 3. On January 6, 2004, the Forest Service approved the suction
6 dredging operations only, and maintained its earlier decision that it would remove the structures
7 if Biggs did not post a bond for their removal within 45 days. It changed the earlier letter by
8 advising Biggs that since he failed to submit a removal plan, he no longer had three years to
9 remove the cabin. Id. at Attachment 36. On April 2, 2004, the Forest Service informed the
10 Biggs that the bond had not been received, and the 45 day appeal period had passed. Id. at
11 Attachment 38. On April 20, 2004, the Forest Service received a letter from Biggs, dated April
12 14, 2004, in which he purports to appeal the January 6, 2004 decision.¹¹ Id. at Attachment 42.
13 On May 4, 2004, the Forest Service rejected this attempted appeal and informed Biggs that it was
14 referring the matter to the U.S. Attorney's Office. Id. at Attachment 45.

15 The Biggs have continued to refuse to remove the structures, although by April
16 13, 2004, the hot tub and most of the items inside the cabin had been removed. Id. at Attachment
17 41. Although the Biggs claim to use the site for mining purposes, Mr. Biggs admitted at
18 deposition that in the past 34 years of suction dredging for gold, he has recovered less than ten
19 ounces of gold. Ex. B., Pl.'s Mem. P. & A. Supp. Mot. Summ. J. The government therefore
20 seeks injunctive relief to remove the unauthorized structures in its first cause of action.

21 As a result of the unauthorized structures, and the fact that the Biggs' mining
22 claims were declared void by the BLM in 1993 and 1998, for the Biggs' failure to file an
23 affidavit of assessment work notice for the year 1994, and for failure to pay maintenance fees,
24 the government, in its second cause of action, seeks an order that all structures including the
25

26 ¹¹ It also received a copy of the April 20th letter on April 22. Id. at Attachment 43.

1 cabin, became the property of the United States. Although the Biggs later recorded two new
 2 notice of locations in 1997, and have maintained active mining claims on this property, the
 3 structures did not re-vest with the Biggs, according to the government. The government seeks
 4 declaratory relief that it is the sole owner of the structures.

5 The third cause of action relates to the Biggs' actions of filing false and fraudulent
 6 Uniform Commercial Code ("UCC") financing statements and liens with the California Secretary
 7 of State in September, 2005, a "Foreign Judgment," and "claims in Admiralty" against the
 8 personal property of eight Forest Service employees and Assistant U.S. Attorney John Gisle,
 9 assertedly in retaliation for enforcing the law pertaining to unauthorized structures on Forest
 10 Service lands. The "notice in admiralty file on demand," attempts to create a false debt against
 11 the nine federal government employees in the amount of \$194,530,000. The government seeks
 12 declaratory and injunctive relief, as well as statutory damages in regard to this cause of action.

13 The only fact which the Biggs appear to dispute relates to their defense that the
 14 Forest Service agents represented over the years that the structures in their mining camp were
 15 grandfathered and acceptable.

16 IV. DISCUSSION

17 A. Mining Law

18 The 1872 Mining Law, 30 U.S.C. §§ 22-54, allows citizens to locate mining
 19 claims on public lands open to location. Independence Mining Co., Inc. v. Babbitt, 105 F.3d
 20 502, 506 (9th Cir. 1997). If a valuable mineral deposit is discovered, a claim may be held
 21 indefinitely so long as certain requirements are met. See id. Without the discovery of a valuable
 22 mineral deposit, no rights arise under the mining laws. Id. Where a valuable deposit has been
 23 found, a claimant has the right to possession and enjoyment of the surface, while the United
 24 States retains title to the land. Cal. Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 575
 25 (1987).

26 \\\

1 The right to possess public lands under the 1872 Mining Law is subject to a good
 2 faith requirement. United States v. Bagwell, 961 F.2d 1450, 1453 (9th Cir. 1992). A claim by
 3 the United States seeking to terminate occupancy of a mining claim may properly be brought
 4 before a district court. See id. at 1454 (stating that the power to make such a determination stems
 5 from the court's jurisdiction to vindicate the United States' possessory interest in public lands).
 6 In deciding whether occupation of public lands is in good faith, courts consider 1) the extent to
 7 which the lands are being used for purposes other than mining, and 2) whether a reasonably
 8 prudent person would be justified in continued expense in developing the claim. Id. at 1455. In
 9 analyzing the first factor, courts have considered 1) whether the lands are being used for
 10 residential or non-mining purposes, 2) the extent of the land's value for purposes other than
 11 mining, 3) the amount of ore that has been mined, 4) significant periods of non-mining activity,
 12 and 5) activity or improvements indicating a good faith intent to undertake mining in the
 13 immediate future. Id. In analyzing whether a reasonably prudent person would be justified in
 14 continued expense, courts have considered 1) the length of time for which no mining activities
 15 have occurred, 2) the condition of the mine, 3) the potential sources of ore for the mill, 4) the
 16 market for processed ore, and 5) operating costs. Id.

17 As recognized by the Forest Service regulations, the operating plan
 18 is at the heart of the creation of an authorized claim. 36 CFR §§
 228.4-228.7. Rare indeed will be the mining claim that does not
 19 require the submission of a plan. (footnote omitted). It is fair to
 20 say in the vast majority of cases that the approval of the operating
 plan is the administrative action which vests the miner with the
 above described property interest.

21 U.S. v. Hall, 751 F. Supp. 1380, 1382 (E. D. Cal. 1990).

22 Certain activities are prohibited without specific authorization, including:

23 (a) Constructing, placing, or maintaining any kind of road, trail,
 24 structure, fence, enclosure, communications equipment, or other
 improvement on National Forest System lands or facilities without
 25 a special use authorization, contract, or approved operating plan,
 unless such authorization, contract, or operating plan is waived
 26 pursuant to § 251.50(e) of this chapter.

(b) Taking possession of, occupying, or otherwise using National Forest System lands for residential purposes without a special-use authorization, or as otherwise authorized by Federal law or regulation.

36 C.F.R. § 261.10(a)(b).

B. Removal of Unauthorized Structures

The government contends that the Biggs' mining claims are subject to Forest Service rules and regulations, and that defendants cannot residentially occupy or maintain structures on their mining claims without an approved POO. The government asserts that since the Biggs did not administratively appeal the February 3, 2003 Forest Service decision to remove the structures, that decision is not subject to challenge. According to the government, the Biggs never received an approved POO to construct or maintain a 14 foot by 16 foot cabin or other structure on their mining claims.

The Biggs argue only that their structures have been grandfathered. They state, "the United States Forest Service agents led the Defendants over the years to believe that if they cleaned up their mining camp after thirty five (35) years of operations and many orders from Forest Service agents to bring trailers and campers to establish that the defendants justify having their storage shed and other facilities, including the bath area outdoor toilet, the cabin was acceptable under the Grandfather Clause." (Docket #75 at 8:3-8.) (emphasis in original.) The Biggs claim that witness Sylvia Shorter was present when agent Richard Zimbeck and Jean Masquelier told Betty Biggs that they had grandfathered the structures on the Biggs' mining claims. The Biggs submit that Shorter is available for testimony or by affidavit; however, they have not submitted any admissible evidence by this witness. (*Id.* at 8:14-18.) The government has submitted writings by the Biggs in which these defendants claim their cabin was grandfathered; however, there is no evidence that the government made such a representation to the Biggs. Ex. A., Pl.'s Mem. P. & A. Supp. Mot. Summ. J., Attachments 19, 28, 40, 46. Rather, the Forest Service's Surface Use Determination stated, "[t]he claimants cabin, bathhouse,

1 and tub are unnecessary and unreasonable for the type of operation proposed and should be
2 removed.” Id., Ex. A, Attachment 30, at 7. Based on that determination, the Forest Service
3 issued its administrative decision requiring the Biggs to remove the structures within a specific
4 time schedule. Id., Ex. A., Attachment 31. The Biggs were advised of their right to
5 administratively appeal this decision, but they did not do so. Id., Ex. A., Attachment 33.

6 Even if the vague assertions proffered by the Biggs of government official
7 representations that their unlawful structure(s) could be grandfathered were enough to constitute
8 “admissions,” and hence issues of fact, it remains clear beyond any doubt that such an issue of
9 fact would be immaterial. The Biggs, in essence, declare that the government is estopped from
10 acting contrary to its former representations. The Biggs’ assertions follow the time worn path,
11 with its equally time worn rejections in all contexts, of attempting estoppel against the
12 government. If the government can be estopped at all, the person so attempting must show that
13 the government engaged in “affirmative misconduct.” Socop-Gonzalez v. INS, 272 F.3d 1176,
14 1184 (9th Cir. 2001) (en banc). “We have previously defined ‘affirmative misconduct’ to mean a
15 ‘deliberate lie’ or a ‘pattern of false promises.’ Negligently providing misinformation...does not
16 meet this definition.” Id. The vague assertions of “the government told me I could do what I
17 was not supposed to do,” in terms of grandfathering unlawful structures does not in any way,
18 shape or form constitute affirmative misconduct.

19 The remaining issue is whether the Biggs have complied with applicable rules and
20 regulations. Undisputed is that they have not. The government has provided evidence of long-
21 standing residential occupancy and maintenance of structures on the subject mining claims
22 without an approved Plan of Operations. The Biggs have raised only unmeritorious legal claims
23 in opposition to the evidence of the government, and they have failed to raise a disputed issue of
24 fact to controvert the evidence the government submitted – they have failed to present any
25 factual predicate from which to draw even an inference in their favor. Because there are no facts
26 which require a jury to resolve, judgment on the record is appropriate.

1 The Secretary of Agriculture has issued regulations for surface use of National
2 Forest System lands in connection with mining. 36 C.F.R. §§ 228.1-228.15. Any proposed
3 operation which “will likely cause significant disturbance of surface resources,” must have an
4 approved plan of operations. See e.g., United States v. Langley, 587 F. Supp. 1258, 1266 (E.D.
5 Cal. 1984) (“The court finds as a matter of law that the maintenance of a fixed residence by
6 defendant creates a sufficiently significant surface disturbance as to require an approved POO
7 [Plan of Operations] pursuant to 36 C.F.R. 228.”). United States v. Hall, 751 F. Supp. at 1382
8 (“[T]he operating plan is at the heart of the creation of an authorized claim . . . Rare indeed will
9 be the mining claim that does not require the submission of a plan.”). Similarly, Forest Service
10 Regulations require an approved operating plan prior to constructing or maintaining structures or
11 improvements on National Forest Service lands. 36 C.F.R. § 261.10(a). Undisputed is that
12 unauthorized structures and improvements exist on the Biggs’ mining claims. Ex. A., Pl.’s Mem.
13 P. & A. Supp. Mot. Summ. J., Attachment 4. Forest Service regulations not only state that
14 erecting a structure requires authorization, but also that *maintaining* a structure requires
15 authorization. 36 C.F.R. § 261.10(a); see also United States v. Burnett, 750 F. Supp. 1029, 1033
16 (D. Idaho 1990) (“the structures and personal property must be removed from the mining claims
17 because [claimant] does not have the requisite approval to keep the structures and personal
18 property on the claims.”). Although the Biggs eventually submitted a proposed POO in June,
19 1999, the Forest Service issued an administrative decision to remove the structures, and the
20 Biggs did not appeal it. Ex. A., Pl.’s Mem. P. & A. Supp. Mot. Summ. J., Attachment 31.
21 Undisputed is that the Biggs never received an approved POO to construct or maintain structures
22 on their mining claims. Ex. A., Pl.’s Mem. P. & A. Supp. Mot. Summ. J., Attachment 31;
23 Schimke Decl., ¶¶ 31, 33. Therefore, the structures are in violation of federal law and must be
24 removed.

25 Federal courts may order claimants to remove unauthorized structures and
26 property from National Forest System lands. See e.g., United States v. Brunskill, 792 F.2d 938

(9th Cir. 1986) (requiring claimants without POO to remove unauthorized structures); United States v. Goldfield Deep Mines Co. of Nevada, 644 F. 2d 1307 (9th Cir. 1981) (upholding district court order requiring removal of trespassing structures and equipment); United States v. Burnett, 750 F. Supp. 1029 (D. Idaho 1990) (claimants without POO required to remove unauthorized structures).

Moreover, because defendants do not have an approved POO, the court should prohibit any residential occupancy. See United States v. Langley, 587 F. Supp. 1258 (E.D. Cal. 1984) (enjoining mining claimant from residing on the claim, occupying structures, or other habitations); United States v. Smith Christian Min. Enterprises, Inc., 537 F. Supp. 57 (D.Or. 1981) (ordering claimants to remove themselves and their possessions from the land by a specified date and directing that if they do not, the remaining structures will be deemed the property of the United States). An injunction should be entered to vacate the claims, order defendants to remove all structures and personal property from the claims, permit the government to take possession of all remaining structures and personal property not timely removed by defendants, issue a writ of ejectment to permit officers of the United States to physically remove defendants and any unauthorized persons from the claims if they have not removed the structures within the time permitted, and prohibit defendants and others acting in concert with them from using the claims when in violation of federal law or this order.¹²

C. The United States Maintains Ownership of the Structures

The government next seeks to establish there is no dispute of fact that the cabin on the Biggs' mining claims became the property of the government when the claims were determined to be void in 1993 and 1998.

Brothers v. United States, 594 F.2d 740 (9th Cir. 1979), involved a claimant's abandonment of a mining claim on federal lands; the reversion of two cabins located on that

¹² The government's request to order defendants to refrain from occupying or using other federal lands unless they comply with the law should be denied as premature and unnecessary.

1 claim to the federal government; the relocation of the claim by subsequent claimants who filed a
 2 claim coinciding with the boundaries of the original claim; and a dispute regarding the
 3 government's ownership of the cabins and the subsequent claimants' right to possess them. 594
 4 F.2d at 740-41. The subsequent claimants argued that when they relocated their claim, the
 5 buildings as well as the land vested in them. Id. at 741. In concluding that the action had been
 6 properly dismissed by the district court, the Ninth Circuit squarely rejected plaintiffs' argument,
 7 stating

8 The plaintiffs had notice that the cabins had been abandoned to the
 9 government. The fact that the Forest Service gave [the former
 10 claimant] permission to remove them after the abandonment does
 11 not give the plaintiffs any rights or interest in them.

12 We conclude that the plaintiffs failed to establish a possessory
 13 interest in the cabins and we need not reach the question whether
 14 they were unlawfully taken by the government.

15 Brothers, 594 F.2d at 741.

16 While the decision in Brothers was announced more than twenty-five years ago,
 17 its holding has never been questioned. Finding the decision in Brothers controlling in the case of
 18 another dispute over ownership of the structures and personal property located on a relocated
 19 mining claim, one district court held:

20 Stated differently, when the Barnes' and the Hagamans validly
 21 relocated the mining claims, they did not get a possessory interest
 22 in the structures and personal property. What they received was an
 23 interest in the mining claims, less the structures and personal
 24 property. When Burnett subsequently purchased or received their
 25 interests in the claims, he succeeded to just the mining claims as
 26 well, with no possessory interest. The Ninth Circuit case law
 seems to be consistent with this view. See Brothers v. United
States, 594 F.2d 740 (9th Cir. 1979). In Brothers, the plaintiffs
 brought an inverse condemnation suit against the Forest Service,
 claiming that the Forest Service had wrongfully taken a mining
 claim and two cabins located on the claim. The plaintiffs in
Brothers argued that once they relocated the abandoned mining
 claim, the cabins, as well as the land, vested in them. They argued
 this, despite conceding the fact that the mining claims and
 buildings reverted to the United States when abandoned by the
 previous locator. Id. at 740-41. The Ninth Circuit specifically

disagreed and pointed out that the plaintiffs had notice that the cabins had been abandoned to the government and that their predecessor was only granted permission to remove the cabins. Based upon this, the court found that the plaintiffs did not have any rights or interest in the cabins. Id. at 741-42. Thus, the court finds the Brothers case controlling.

United States v. Burnett, 750 F. Supp. 1029, 1032 (D. Idaho 1990).

Under the decision in Brothers, the Biggs have no possessory interest in the cabin. It is undisputed that the BLM declared both of the Biggs' mining claims void on April 27, 1993, and although the Biggs appealed that decision, the appeal was dismissed by the BLM. Ex. C., Pl.'s Mem. P. & A. Supp. Mot. Summ. J., Schimke Decl., ¶ 3, Attachments 2, 3, 4. On December 8, 1993, the BLM also declared void other mining claims recorded by the Biggs on May 28, 1993. This decision was not appealed. Id., ¶¶ 4, 5, Attachments 5, 6. The BLM declared two additional mining claims, recorded April 4, 1994, forfeited by operation of law on June 11, 1998. This decision was not appealed. Id., ¶¶ 6, 7, Attachments 7, 8. Ownership of the structures reverted to the government in 1993, and did not re-vest with the Biggs when they later recorded new mining claims in 1997.¹³

D. Defendants' False Financing Statements

The government seeks relief from false financing statements filed against nine federal employees, through the fraud injunction statute, 18 U.S.C. § 1345, the False Claims Act, 31 U.S.C. §§ 3729, et seq., and the California Commercial Code, §§ 9509, 9625.

1. Fraud Injunction Statute

The statute providing for injunctions against fraud states in part that if someone is violating or about to violate chapter 63 (mail fraud), the Attorney General may commence a civil action to enjoin such violation. 18 U.S.C. § 1345 (a)(1)(A). The mail fraud statute provides:

¹³ It is unclear what, if any property reverted to the government as a result of its 1998 decision, as it appears that all property previously had reverted to the government as a result of its 1993 decision.

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, ..., for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service ..., shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. § 1345.

It is undisputed that Biggs filed and served a set of false Admiralty papers on December 22, 2005, which attempts to create a judgment against the nine federal employees as debtors in the amount of \$194,530,000. Ex. D., Pl.'s Mem. P. & A. Supp. Mot. Summ. J. It is also undisputed that the Biggs filed UCC financing statements with the California Secretary of State which contained false information regarding the nine federal employees. These statements attempted to create a lien against the personal property of these nine employees. Id. Both sets of papers were filed with this court. (Docket #27.) All of these papers were sent through the U.S. mail. Ex. D., Pl.'s Mem. P. & A. Supp. Mot. Summ. J. It is undisputed that there are no grounds for a lien or judgments against these nine employees, and therefore the papers filed by Biggs are fraudulent. Ex. E, ¶ 3, Pl.'s Mem. P. & A. Supp. Mot. Summ. J.¹⁴ The undersigned finds that by submitting false papers by mail, the Biggs did indeed intend to obtain property, i.e., the cabin and other fixtures, in the hopes that through intimidation of officers, the United States would cease to "bother" the Biggs, now and in the future.¹⁵ See United States v. Pinkston, 2007 WL 1437690 (W.D. Texas 2007). As there are no disputed facts concerning these violations, the government is entitled to a permanent injunction.

2. False Claims Act

The aforementioned acts by defendants also qualify as violations of the False Claims Act. It provides that a person who "knowingly presents, or causes to be presented, to an

¹⁴ Exhibit E does not contain John Gisla's signature; however, defendants have not objected. Therefore, the court will presume Gisla joins in the declaration.

¹⁵The scheme appears to be one of extortion as well.

officer or employee of the United States Government ... a false or fraudulent claim for payment or approval ... is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person....”
31 U.S.C. § 3729(a).

As the evidence set forth in the preceding section indicates, the Biggs’ filing of December 22, 2005 constitutes a false and fraudulent claim for payment against the nine federal employees, and was presented to them. United States v. Orrego, 2004 WL 1447954 (E.D.N.Y. 2004). But see U.S. v. Pinkston, 2007 WL 1437690, *7, n.66 (W.D. Tex. May 14, 2007) (finding that lien was not claim because no evidence that defendant demanded payment, such as by submitting an invoice). Here, the Biggs do not dispute this point of law and the Admiralty papers, misguided as they are, constitute the claim. Nothing in the False Claims Act requires the claim to be well conceived in addition to fraudulent. Based on the patently false papers which show malicious intent, the government’s request for the maximum penalty of \$10,000 should be granted.

3. False Financing Statements Under the California Commercial Code

The individual defendants also seek relief from the false financing statements under the California Commercial Code which provides:

- a) A person may file an initial financing statement,... only if either of the following conditions is satisfied:
 - (1) The debtor authorizes the filing in an authenticated record or pursuant to subdivision (b) or (c).
 - (2) ...
 - (b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement,

Cal. Com. Code § 9509 (West 2001).¹⁶ Based on the undisputed facts and evidence submitted by

¹⁶ The court finds that it has supplemental jurisdiction to entertain the claims of the individual government employees pursuant to 28 U.S.C. § 1367. Jurisdiction under 28 U.S.C. §

1 the government, as outlined in the previous sections, the government is entitled to the following
2 remedies for the filing of a false financing statement.

3 Cal. Com. Code § 9625 provides that in addition to damages for actual loss, a
4 person named as a debtor may recover \$500 from the person who files a record under § 9509
5 which he or she is not entitled to file. Therefore, each of the nine federal employees is entitled to
6 \$500 in statutory damages.

7 Additionally, § 9625 provides that the individual employees are entitled to
8 declaratory and injunctive relief for the defendants' filing of a false financing statement: "(a) If it
9 is established that a secured party is not proceeding in accordance with this division, a court may
10 order or restrain collection, enforcement, or disposition of collateral on appropriate terms and
11 conditions."

12 Therefore, the employees are entitled to its requested relief of an order declaring
13 the financing statements void, authorizing the California Secretary of State to expunge them from
14 the public record, and enjoining defendants from filing any more financing statements.

15 V. CONCLUSION

16 Accordingly, IT IS ORDERED that defendants' motion to dismiss, filed February
17 5, 2007, is construed as an opposition to the government's motion for summary judgment.

18 For the reasons stated in this decision, IT IS HEREBY RECOMMENDED that:

19 1. The government's October 27, 2006, summary judgment motion be granted
20 and judgment be entered in favor of the government;

21 2. Defendants, and all those acting in concert with them, be ordered to vacate the
22 unauthorized structures, including the 14'x16' cabin, on Defendants' Crescent Extension and
23 Crescent #2 mining claims, within thirty (30) days of entry of the order of the Court;

24 \\\

25 _____
26 1345 would not be appropriate in that the officers of the United States have not (as of yet) been
expressly authorized to sue under an Act of Congress.

1 3. Defendants, and all those acting in concert with them, be ordered to remove
2 from their Crescent Extension and Crescent #2 mining claims all unauthorized buildings,
3 structures, equipment and personal property within ninety (90) days of entry of the order of the
4 Court;

5 4. Plaintiff United States be permitted to take possession of all unauthorized
6 buildings, structures, equipment and personal property not timely removed by Defendants, and to
7 dispose of it without further order of the Court, notice, administrative action or accounting;

8 5. The Court issue a writ of ejectment so that officers of the United States,
9 including the U.S. Marshal and U.S. Forest Service law enforcement officials, may physically
10 remove Defendants and other unauthorized persons from the unauthorized structures on
11 Defendants' Crescent Extension and Crescent #2 mining claims if Defendants, and anyone acting
12 in concert with them, fail to vacate and remove the structures within the time ordered by the
13 Court;

14 6. An injunction be issued prohibiting Defendants, and all those acting in concert
15 with them, from occupying or using their Crescent Extension and Crescent #2 mining claims if
16 such use is in violation of federal law or this Order;

17 7. An order issue declaring that the United States of America is the sole owner of
18 all structures, including the 14'x16' cabin, located on Defendants' Crescent Extension and
19 Crescent #2 mining claims; that Defendants have no legal interest in the structures located on
20 Defendants' Crescent Extension and Crescent #2 mining claims; and that the United States of
21 America has the legal right to remove all structures located on Defendants' Crescent Extension
22 and Crescent #2 mining claim, with no notice or compensation owing to Defendants.

23 8. An order issue declaring that all Financing Statements, liens, Judgments and
24 Claims of any type, including all "Admiralty" claims, filed or presented by William Biggs against
25 the person or property of the nine named Federal employees are false, fraudulent, invalid, null,
26 void, and of no legal effect;

1 9. An order issue granting leave to the government to file the judgment and order
2 of this court with the California Secretary of State, and permitting the Secretary of State to
3 expunge and remove from all public records each of the false and fraudulent financing statements
4 filed by William Biggs against the property of the nine Federal employees;

5 10. With respect to any dispute directly or indirectly related to the issues and
6 property in this case, William Biggs and his agents, employees and any others in active concert or
7 participation with him be permanently enjoined from taking the following actions: a. Filing or
8 recording any document or instrument of any description, including UCC Financing Statements,
9 judgments and “admiralty claims,” which purport to create a debt, lien or record of any kind
10 against the person or property of the nine Federal employees, or any other federal officer or
11 employee, without the prior order of this court; and b. Attempting to enforce any Financing
12 Statement, lien, judgment or claim of any kind, including any “Admiralty” claim, against the
13 person or property of the nine Federal employees, or any other federal officer or employee,
14 without the prior order of a recognized court;¹⁷

15 11. William Biggs be ordered to pay to each of the nine Federal employees
16 statutory damages of \$500 pursuant to California Commercial Code § 9625; and

17 12. William Biggs be ordered to pay to the United States of America a civil
18 penalty of \$10,000 pursuant to the False Claims Act.

19 These findings and recommendations are submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within ten
21 (10) days after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections
24

25 ¹⁷ The government’s request for an order prohibiting the Biggs from taking action to
26 retaliate against or harass the nine Federal employees is denied as unnecessary since the Biggs
are under an ongoing obligation to follow the law.

1 shall be served and filed within ten (10) days after service of the objections. The parties are
2 advised that failure to file objections within the specified time may waive the right to appeal the
3 District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 DATED: 11/6/07

/s/ Gregory G. Hollows

5
6 GREGORY G. HOLLOWS
U. S. MAGISTRATE JUDGE

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